

**APPROVED MINUTES\***  
**SUNNYVALE CITY COUNCIL**  
**TUESDAY, FEBRUARY 24, 2009**

**6 P.M. SPECIAL COUNCIL MEETING (Study Session)**

Overview of Proposed 124 Unit Senior Housing Project at 660 South Fair Oaks Avenue

**7 P.M. COUNCIL MEETING**

**SALUTE TO THE FLAG**

Vice Mayor Moylan led the salute to the flag.

**ROLL CALL**

**PRESENT:**

Vice Mayor Christopher Moylan  
Councilmember John Howe  
Councilmember Ron Swegles  
Councilmember Melinda Hamilton  
Councilmember David Whittum  
Councilmember Dean J. Chu

**ABSENT:**

Mayor Anthony Spitaleri (Excused)

**STAFF PRESENT:**

City Manager Gary Luebbers  
Assistant City Manager Robert Walker  
City Attorney David Kahn  
Director of Community Development Hanson Hom  
Planning Officer Trudi Ryan  
Intergovernmental Relations Officer Yvette Blackford  
Interim City Clerk Katherine Bradshaw Chapplear

Vice Mayor Moylan stated Mayor Spitaleri had a family emergency and was excused from the Council meeting; therefore, Vice Mayor Moylan presided over the meeting.

**PUBLIC ANNOUNCEMENTS**

Councilmember Whittum announced *Walkability*, a free community workshop, that will include a neighborhood walk and small group discussions regarding making Sunnyvale more pedestrian-friendly.

Councilmember Whittum announced the inaugural "Challenge Bicycle Ride," which consists of a 26-mile route with designated stops along the way. Surrounding cities have joined together to promote healthy activities.

Teri Stewart, representing Charles Street Community Gardens, encouraged Council and the community to attend the Garden's activities and gave an overview of upcoming events.

*\*Approved as amended by Council on April 21, 2009*

## **CONSENT CALENDAR**

Councilmember Hamilton removed Item 1.A. from the Consent Calendar for the purpose of abstaining from the vote.

Councilmember Chu removed Items 1.A. and 1.B. for the purpose of abstaining from the vote.

MOTION: Councilmember Swegles moved, and Councilmember Hamilton seconded, to approve the Consent Calendar with the exception of Items 1.A. and 1.B.

VOTE: 6-0 (Mayor Spitaleri absent)

### **1.A. Approval of Council Meeting Minutes of November 18, 2008**

Councilmembers Hamilton and Chu stated they were abstaining from voting on this item since they were not present at the November 18, 2008, meeting.

MOTION: Councilmember Swegles moved and Councilmember Whittum seconded, to approve Item 1.A., as amended.

VOTE: 4-2 (Councilmembers Chu and Hamilton abstained, and Mayor Spitaleri absent)

### **1.B. Approval of Council Meeting Minutes of December 2, 2008**

Councilmember Chu stated he is abstaining from voting on this item since he was not present at the December 2, 2008, meeting.

MOTION: Councilmember Hamilton moved, and Councilmember Whittum seconded, to approve Item 1.B.

VOTE: 5-1 (Councilmember Chu abstained and Mayor Spitaleri absent)

### **1.C. Approval of Information/Action Items – Council Directions to Staff**

#### **Fiscal Items**

#### **1.D. RTC 09-049      List of Claims and Bills Approved for Payment by the City Manager – List Nos. 440 and 441**

Staff Recommendation: Council reviews the attached lists of bills.

#### **1.E. RTC 09-044      Acceptance and Appropriation of Department of Homeland Security Training Funds and Budget Modification No. 28**

Staff Recommendation: Alternative No.1: Council accepts and appropriates the SUASI monies for the Multiple Patient Management Planning Drill and approves Budget Modification No. 28.

### **Personnel Items**

- 1.F. RESOLUTION      Amendment to the Schedule of pay of the Salary Resolution: Salary  
RTC 09-051      Adjustment for Pay Plan Category A (applies to Classified Public  
Safety Dispatchers-in-Training, Dispatchers, and Senior  
Dispatchers)**

Staff Recommendation: Alternative No. 1: Council amends Section 2.000 (Pay Plan Category A) of the Schedule of Pay of the Salary Resolution to reflect the new pay rates, effective February 8, 2009.

### **Contracts**

- 1.G. RTC 09-054      Award of Bid No. F0811-36 for the Reconstruction of Curbs, Gutters,  
Sidewalks and Driveway Approaches Throughout Sunnyvale**

Staff Recommendation: Council awards a contract, in substantially the same form as the attached draft and in the amount of \$286,215 to JJR Construction, Inc. for reconstruction of curbs, gutters, sidewalks and driveway approaches; and approves a project contingency in the amount of \$71,554.

- 1.H. RTC 09-057      Award of Request for Proposals No. F0810-24 to Develop a Water  
Utility Master Plan**

Staff Recommendation: Council awards a contract, in substantially the same form as the attached draft and in the amount of \$189,892, to Infrastructure Engineering Corp. (IEC) for consulting services required to develop a Water Utility Master Plan (Base Project); and Council approves a design contingency in the amount of \$9,495.

### **Other**

- 1.I. RESOLUTION      Federal Economic Stimulus Surface Transportation Program Funds  
RTC 09-052      for Local Streets and Roads Rehabilitation Projects – Resolution of  
Support**

Staff Recommendation: Alternative No. 1 - Council approves the Resolution of Support for Federal Surface Transportation Program Funds for Local Streets and Roads Rehabilitation Projects.

- 1.J. RTC 09-048      Approval of Final Maps (Tract Nos. 10,004 and 10,005, Barranca and  
Arroyo Terrace) – 16 Unit Townhomes at the Northwest and  
Southwest Corner of Cortez Drive and South Bernardo Avenue by  
Two Corners, LLC.**

Staff Recommendation: Council approves final maps for Tract Nos. 10,004 and 10,005; authorizes the Mayor to sign the subdivision agreement upon developer's signatures, submittal of improvement securities, payment of development fees, and submittal of other documents deemed necessary by the director of public works; directs the city clerk to sign the city clerk's statement; and directs the city clerk to forward the final maps for recordation.

- 1.K. ORDINANCE      Adoption of Ordinance 2891-09 Amending Section 19.12.200 ("S") of  
No. 2891-09      Chapter 19.12 (Definitions) and Certain Sections of Chapter 19.44  
                                 (Signs) of Title 19 (Zoning) of the Sunnyvale Municipal Code  
                                 Pertaining to Signs and Street Address Numbers**

Staff Recommendation: Council approves second reading of Ordinance No. 2891-09.

**STAFF RESPONSES TO PRIOR PUBLIC COMMENTS**

None

**PUBLIC COMMENTS**

None

**PUBLIC HEARINGS/GENERAL BUSINESS**

- 2.      RTC 09-045      2007-0306 – Rite Aid [Applicant] Tikvica Family Trust [Owner]:  
                                 Appeal by the applicant of a decision of the Planning Commission  
                                 approving a Special Development Permit for a drug store/pharmacy  
                                 which includes a condition of approval to remove one of the two  
                                 proposed drive-through lanes. The property is located at 1010  
                                 Sunnyvale-Saratoga Road (at E. Remington Drive.) in a C-1/PD  
                                 (Neighborhood Business/Planned Development) Zoning District.  
                                 Special Development Permit to allow an approximately 14,673  
                                 square foot drug store/pharmacy with a drive-through**

Planning Officer Trudi Ryan presented the staff report.

Vice Mayor Moylan verified with Planning Officer Ryan that Council has broad discretion on this item, because it is considered a new hearing, and Council has the option to modify the project more than what was approved by the Planning Commission.

Councilmember Howe inquired about impervious surfaces and Planning Officer Ryan explained there is not a specific requirement for impervious surfaces; however, there is a requirement for storm water management best practices to be used in relation to storm-water runoff. Permeable surfaces are commonly used to keep water on the site instead of running into the storm drain system and the Planning Commission does encourage the use of permeable surfaces.

Councilmember Howe inquired as to who will approve the use of signs and Planning Officer Ryan stated sign permits go through a staff-level review; however, Council may add a condition of approval for the review of sign permits to go through the Planning Commission or Council.

Councilmember Chu inquired if the fence would be higher than six feet and Planning Officer Ryan responded that she would need to verify as to whether a requirement for a taller fence was added to the project.

Vice Mayor Moylan asked if the Walgreens on El Camino was the only pharmacy that had a drive-through service window and Planning Officer Ryan stated she did not know.

Vice Mayor Moylan verified with Planning Officer Ryan that staff is not aware of any complaints from the community since the drive-through became operational.

Director of Community Development Hanson Hom explained the general consensus for drive-through pharmacies is they do not have the same noise and air pollution concerns as a drive-through fast-food restaurant.

Public hearing opened at 7:15 p.m.

Gaylin Grant, Craig and Grant Architects, represented the applicant. Grant stated they retracted the appeal and were not requesting the second drive-through lane. After careful consideration, the owner and Rite Aide decided the second drive-through was not needed.

Vice Mayor Moylan verified with City Attorney David Kahn, since the second drive-through lane was no longer an issue, it would not need Council's consideration. However, any other issues contained in the appeal were still before Council.

Councilmember Swegles verified with Grant that Tobe Koski, Rite Aid District Manager, and Greg Weiman, Rite Aid Real Estate Director, were available for questions.

Councilmember Swegles inquired about the financial status and longevity of the proposed Rite Aid. Weiman responded that Rite Aid will be signing a long-term 20-year lease; however, if Rite Aid were to file bankruptcy, the developer would be free to do something else with the property. Weiman explained Rite Aid's investment was limited to approximately \$650,000 in capital investment, including inventory transferred from their existing store that was being relocated.

Councilmember Whittum asked the Rite Aid representatives to comment on traffic, noise and esthetics of the project and how this project may impair the adjacent properties. Grant responded, as the second architect firm involved with this project, they modified and improved the design in order to assist with some design issues. The design was presented during a neighborhood meeting, in which more than 500 invitations were mailed, and two people attended. Grant explained many issues were discussed during the neighborhood meeting, including reduction of pavement and landscaping buffers.

Councilmember Hamilton verified with Koski shopping carts will not be allowed out of the store.

Councilmember Hamilton verified the structure will be owned by the developer.

Vice Mayor Moylan verified with Grant the building was placed on site in such a manner as to allow adequate parking.

Jane Kayo stated she lives across the street from the proposed project and, in her opinion; there isn't a need for another pharmacy in the area. Kayo stated concern about the proposed pharmacy removing the neighborhood feel of the area and was concerned about trash, loitering, traffic and pollution issues. Kayo said she collected more than 100 signatures of individuals who opposed the pharmacy and stated the neighborhood does not feel the area is appropriate for a drive-through pharmacy.

Emma Duque expressed concerns over idling cars, foot traffic, loitering and pollution issues. Duque stated she did not receive notice of the neighborhood meeting.

Councilmember Chu verified with Duque that her impression of the fence height was six feet.

Grant offered closing statements and stated Rite Aid wants to be a good neighbor and takes pride in their structures. Grant stated one of the unique aspects of a pharmacy drive-through was they do not have cars waiting in line similar to a fast food drive-through. Grant explained a pharmacy drive-through was not the type of use that contributed to trash and loitering.

Councilmember Swegles stated it appeared a six-foot fence would be tall enough to restrict viewing from a car sitting in the drive-through lane.

Councilmember Swegles inquired whether Rite Aid will have security cameras for the outside area, and Koshi stated they typically have security cameras inside the facility; however, if Council made this a requirement, they would comply.

Councilmember Swegles verified with Koshi should loitering become an issue, Rite Aid would consider adding outside security personnel.

Councilmember Hamilton verified with Grant the developer was interested in using green building elements for the proposed project. Grant explained some of the elements will be used and they will meet the Leadership in Energy and Environmental Design (LEED) silver standard.

Councilmember Whittum asked Grant about the sign size, site location, hours of operation, noise and trash enclosure concerns. Grant explained the area will have a larger parking area; the drive-through would be operational from 9 a.m. to 9 p.m.; noise had not been an issue due to limited time the car would be at the drive through window; trash is screened from the street by the building; trash pick-up would not occur after hours; and the sign was replaced with modestly sized letters and sign size.

Councilmember Whittum verified with Grant the project would not move forward without the drive-through.

Arthur Schwartz requested the lighting at Rite Aid be carefully monitored to avoid blinding motorists.

An unidentified member of the public inquired about deliveries, and Grant explained Rite Aid receives one or two deliveries a week. Deliveries would occur between 7 a.m. and 10 p.m., as identified in the conditions of approval from the Planning Commission.

Public hearing closed at 8:01 p.m.

Vice Mayor Moylan asked City Attorney Kahn if Council will need to take any action on this item since the appeal was withdrawn. City Attorney Kahn responded the appeal was retracted with respect to the second drive-through lane; however, Council action was required to affirm the Planning Commission's conditions of approval or modify those conditions.

Councilmember Hamilton stated she had a question for the appellant. Vice Mayor Moylan reopened the public hearing.

Councilmember Hamilton stated many pharmacies in the area do not have drive-through pharmacies and inquired why eliminating the drive-through would stop this project. Grant responded any pharmacy without a drive-through will eventually relocate to a building where they can operate a drive-through. Councilmember Hamilton asked why a drive-through was so important and Grant explained it addresses the needs of the sick and those not wanting to go into the store. As a service to the neighborhood, the drive-through is an important aspect.

Vice Mayor Moylan closed the public hearing.

Councilmember Swegles verified with Planning Officer Ryan security cameras were not discussed; however, if they were added, there would be code provisions related to the location of the outside cameras.

**MOTION:** Councilmember Swegles moved, and Councilmember Chu seconded, to approve Alternative No.1: Council denies the appeal and upholds the decision of the Planning Commission approving the Special Development Permit with conditions including the removal of one drive-through lane.

**with:**

- Staff to work with applicant regarding addition of security cameras; and
- Staff to work with applicant to have a security person on premises if loitering becomes an issue.

In response to Councilmember Chu's earlier question, Planning Officer Ryan explained when the project was originally built, staff would have required a six-foot high fence. Councilmember Chu verified with Planning Officer Ryan there was not any discussion with the developer on raising the wall height.

Councilmember Howe stated he would not support the motion because the proposed project would be a significant change for the area, as identified by the public speakers. Councilmember Howe stated the project should not be built.

**FORMAL AMENDMENT:** Councilmember Whittum moved, and Councilmember Howe seconded, an amendment to the original motion to remove the drive-through from the project.

Councilmember Whittum stated the issue was compatibility with the surrounding neighborhood and the proposed project is not appropriate for the area. The six-foot fence will have residential uses right behind it and noise is an issue.

Councilmember Swegles stated he would not support the amendment. Councilmember Swegles explained the fence height was not an issue since the viewing height while driving through the drive-through would not allow anyone to see over a six-foot fence. The nose factor and exhaust fumes would not compare to the previous restaurant at that location.

Vice Mayor Moylan stated he would not support the amendment. Vice Mayor Moylan explained many people would not want to go inside a store when they are ill. The fears of

the effects of a drive-through have not been realized. Should this project not be approved, the area will continue to have a vacant restaurant, which is not a good situation.

VOTE: 3-3 (Councilmember Swegles, Vice Mayor Moylan and Councilmember Chu dissenting, and Mayor Spitaleri absent)

Amendment failed.

FORMAL AMENDMENT: Councilmember Whittum moved, and Councilmember Hamilton seconded, an amendment to the original motion to include an eight-foot masonry wall around the property for the purpose of mitigating noise impact on residents.

Councilmember Chu verified with Planning Officer Ryan the City requires a six-foot masonry wall between commercial and residential uses. If a two-story residential use exists, then the requirement is for an eight-foot masonry wall.

Councilmember Chu requested a friendly amendment to the formal amendment to increase the wall height to nine feet. Councilmember Whittum accepted the friendly amendment.

Vice Mayor Moylan asked why Councilmember Chu was requesting a nine-foot wall height. Councilmember Chu explained the Best Buy project received residential complaints about the eight-foot fence.

Councilmember Swegles stated he would not support the amendment and explained sound will still travel. Requiring a taller fence would be an unnecessary additional expense.

VOTE: 4-2 (Councilmember Swegles and Vice Mayor Moylan dissenting, and Mayor Spitaleri absent)

Councilmember Whittum inquired about the revised height of the Rite Aid sign. Planning Officer Ryan stated staff has not reviewed signage at this time and sign approvals are subject to a separate review. Councilmember Whittum verified with Planning Officer Ryan signage would be approved at the staff level.

FORMAL AMENDMENT: Councilmember Whittum moved a formal amendment to remove the red Rite Aid sign.

Amendment died for lack of a second.

FORMAL AMENDMENT: Councilmember Whittum moved, and Councilmember Howe seconded, an amendment to the original motion to add a condition of approval requiring any signage be reviewed within an administrative hearing with the option of being appealed to Council.

VOTE: 5-1 (Councilmember Swegles dissented, and Mayor Spitaleri absent)

MOTION: Councilmember Swegles moved, and Councilmember Chu seconded, approval of Alternative No.1: Council denies the appeal and upholds the decision of the Planning Commission approving the Special Development Permit with conditions including the removal of one drive-through lane.

**with:**

- Staff to work with applicant regarding addition of security cameras;
- Staff to work with applicant to have a security person on premises if loitering becomes an issue;
- Inclusion of a nine-foot masonry wall around the property for the purpose of mitigating noise; and
- Condition of approval requiring signage to be reviewed within an administrative hearing with the option of being appealed to Council.

VOTE: 4-2 (Councilmembers Howe and Hamilton dissented, and Mayor Spitaleri absent)

**3. RTC 09-055      2008-0936 – Bergman Companies [Applicant] De Anza Square  
[Owner]: Appeal by a Councilmember of a decision of the Planning  
Commission for a Use Permit to allow a grocery store (Fresh &  
Easy) in an existing retail space greater than 10,000 square feet.  
The property located at 1356 S. Mary Avenue (near W Fremont Ave  
at De Anza Square Shopping Center) in a C-1 (Neighborhood  
Business) Zoning District**

Vice Mayor Moylan explained that one of the property owners for this item made an in-kind contribution to his re-election campaign and he must recuse himself from the dais.

Vice Mayor Moylan explained that an election must be held for mayor pro-tem for this item.

Councilmember Howe stated that seniority should be used for the choice of mayor pro-tem; however, since he was the Councilmember who appealed this item; he will nominate Councilmember Swegles to serve as mayor pro-tem.

No other nominations received.

Vice Mayor Moylan announced Councilmember Swegles will act in the capacity of mayor pro-tem. Vice Mayor Moylan left the dais.

Planning Officer Ryan presented the staff report.

Councilmember Howe inquired as to when this project started and Planning Officer Ryan explained that she does not have the exact date but in 2008, the property owner was informed that a Use Permit would be required.

Councilmember Howe inquired as to the actual application date and Planning Officer Ryan stated she will obtain that information.

Councilmember Howe verified with Planning Officer Ryan that around the year 1999 or 2000, a requirement was added, in which the reuse of a space, new construction or remodeling of a 10,000 square foot, or larger, would be subject to a Use Permit.

Public hearing opened at 8:15 p.m.

Councilmember Howe requested the applicant have five minutes to speak. Mayor Pro Tem Swegles agreed.

John Vidovich, applicant, explained that previously with an existing center, a Use Permit was not required when a tenant changed. The Use Permit is a lengthy process and the consequence of the delay in this case is the tenant has asked for an extension prior to moving in due to the current economy. Vidovich stated the Use Permit requirement for a change in tenants for a 10,000 square foot facility should be reviewed by Council.

Vidovich addressed the General Conditions and requested the City allow five years under General Conditions, 1.D. and 1.E.

Vidovich requested Council allow the new tenant, Fresh and Easy, to have a larger sign.

Vidovich stated they do not want to change 12 parking spaces into permeable pavers (Condition 7.G.), since this is an existing site and not a new building.

Councilmember Howe verified with Planning Officer Ryan that the design of the sign on Attachment I is what staff prefers because of architectural compatibility, and that the sign Fresh and Easy is requesting is out of scale with the building.

Councilmember Chu verified the Planning Commission gave direction to the applicant to work with staff to modify their sign.

Paul Roman, Bergman Companies and representative for Fresh and Easy, commented on the sign design they preferred for approval. Roman stated the sign is the same as the one approved by staff, with the exception that the revised sign is 24 inches taller.

Councilmember Hamilton verified with Roman that the preferred sign for Fresh and Easy is a stacked sign.

Councilmember Hamilton verified with Roman that Fresh and Easy has locations in Southern California, Las Vegas, and Arizona.

Vidovich stated the biggest concern is the 10,000-square-foot requirement for a Use Permit, because it means businesses will leave if they are required to go through this process. Vidovich urged Council to review this requirement.

Public hearing closed at 8:30 p.m.

MOTION: Councilmember Howe moved and Councilmember Chu seconded to approve Alternative No. 2: Council approves the appeal and upholds the decision of the Planning Commission to approve the Use Permit with modified conditions:

- Remove Condition 7.G. - Remove the pervious material requirement;
- Change Condition 1.D., to **two** years and to read as "...if the use is discontinued for period of ~~one~~ **two** years or more." City manager at his discretion may extend the grace period an additional three years for a total of five years;
- Change Condition 1.E., to **three** years and to read as, "The Use Permit shall be null and void ~~two~~ **three** years from the date of approval...". City manager has discretion to extend the time period an additional two years for a total of five years;
- Change Condition 1.G., to allow the property owner the ability to appeal the Merchandise Plan if not approved by the Director of Community Development; and
- City manager to approve the sign in the next thirty days and do what is needed to assist Fresh and Easy to establish their business in this location.

Councilmember Howe addressed the importance of additional grocery stores in Sunnyvale and he would like to see this grocery store open as planned.

Councilmember Howe stated another indication in the motion should be that Council wants this location to be a grocery store and wishes to work with Fresh and Easy to assist them in locating to Sunnyvale.

Councilmember Hamilton verified with Councilmember Howe that his motion is for the city manager to make the decision on the approved sign.

Director of Community Development Hom stated Council has the ability to approve the revised sign if the architectural element is acceptable. Councilmember Howe revised his motion to reflect acceptance of the revised sign.

Restated MOTION: Councilmember Howe moved and Councilmember Chu seconded to approve Alternative No. 2: Council approves the appeal and upholds the decision of the Planning Commission to approve the Use Permit with modified conditions:

- Remove Condition 7.G. - Remove the pervious material requirement;
- Change Condition 1.D., to **two** years and to read as ... "if the use is discontinued for period of ~~one~~ **two** years or more." City manager at his discretion may extend the grace period an additional three years for a total of five years;
- Change Condition 1.E., to **three** years and to read as, "The Use Permit shall be null and void ~~two~~ **three** years from the date of approval...". City manager has discretion to extend the time period an additional two years for a total of five years;
- Change Condition 1.G., to allow the property owner the ability to appeal the Merchandise Plan if not approved by the Director of Community Development;
- City manager to ~~approve the sign in the next thirty days~~ and do what is needed to assist Fresh and Easy to establish their business in this location; and
- Council approves the revised sign as presented by the applicant, Fresh and Easy, which is the same material and design as staff approved with the exception of an additional 24 inches in height.

VOTE: 5-0 (Vice Mayor Moylan recused and Mayor Spitaleri absent)

City Attorney Kahn stated there may be an issue if the additional years which Councilmember Howe granted exceed the maximum allowed by the ordinance. City Attorney Kahn stated he will review this issue and return to Council if he identifies a problem with the extensions.

Councilmember Howe explained the intent of his motion was to allow the maximum time the city manager will allow for this project. Councilmember Howe explained after the city attorney's review, if the time allowed in the motion is not in agreement with the ordinance, then he would like the item to come before Council again at least in the form of an information item.

Councilmember Chu explained the decorative pavers were an unnecessary burden for the retailer because the shopping center has been in existence for 30 years and the grocery store location has been vacant for six years. Councilmember Chu stated this grocery store is needed.

Vice Mayor Moylan returned to the dais.

Councilmember Howe stated he would sponsor a study issue to review the requirement for a Use Permit for facilities that are 10,000 square feet or larger. Councilmember Chu stated he would co-sponsor the study issue.

**4. RTC 09-046 2009 Priority Issues and Legislative Advocacy Positions**

Intergovernmental Relations Officer Yvette Blackford presented the staff report.

Councilmember Chu corrected policy 7.3.2, page 5, item 3, last section which mentions that "... Santa Clara Valley Transportation Authority (VTA) is actively planning for highway improvements, including express toll lanes on Highways 85, 237 and 101." Councilmember Chu explained VTA is not planning for express toll lanes on Highway 237, so that reference should be removed. Intergovernmental Relations Officer Blackford stated the section would be corrected.

Councilmember Chu stated the report for the Future of Surface Transportation System Study (Item 20 as listed on page 10) has already been concluded.

Councilmember Chu stated the action for Item 21 may have already been concluded.

Public hearing opened at 9 p.m.

No speakers.

Public hearing closed at 9 p.m.

Councilmember Whittum stated he had potential amendments to add to the Legislative Action Priorities (LAP) section 7, Planning and Management. Councilmember Whittum suggested advocating for clarification from the legislature that prevailing wages do not apply to charter cities and for a moratorium for state-imposed prevailing wages for public work projects. City Attorney Kahn explained the courts have not decided on the issue of prevailing wages applying to charter cities. The legislature has been clear that the prevailing wage requirement should apply both to general law and charter cities. However, the City of Vista currently is questioning whether or not they can exempt themselves from the prevailing wage requirement. This case has not yet gone to the court of appeals, but once that case is decided, it should offer guidance on whether or not it is constitutional for charter cities to pay state mandated prevailing wages in all public works projects.

MOTION: Councilmember Whittum moved to amend a LAP currently before Council. Councilmember Whittum moved to add language, worded by staff, to advocate for a moratorium on state-imposed prevailing wage requirements for public works projects, whether maintenance or construction, in order to seek relief in extremely difficult budgetary climate.

MOTION FAILED for lack of a second.

Councilmember Swegles verified with City Attorney Kahn if the City receives state or federal funds then the City is required to pay the prevailing wage. City Attorney Kahn explained that for City projects, there was a Council policy enacted in 2000 that states the City shall pay prevailing wages for City public works projects.

MOTION: Councilmember Swegles moved and Councilmember Hamilton seconded to approve Alternative No.1: Council approves the Proposed 2009 Legislative Advocacy Positions, (Attachment A) including the positions, Priority and Priority Watch issues, and 2009 League of California Cities (LCC) and National League of Cities (NLC) Resolutions.

Councilmember Chu requested his minor changes be included in the motion and Councilmember Swegles agreed.

Restated MOTION: Councilmember Swegles moved, and Councilmember Hamilton seconded, to approve Alternative No. 1: Council approves the *Proposed 2009 Legislative Advocacy Positions*, (Attachment A) including the positions, Priority and Priority Watch issues, and 2009 League of California Cities (LCC) and National League of Cities (NLC) Resolutions

**with:**

- Staff to correct policy 7.3.2, page 5, item 3, last section, remove Highway 237 from the highway improvements of toll lanes;
- Staff to remove the Future of Surface Transportation System Study from Item 20 as listed on page 10, as it has already been completed; and
- Staff to verify that the action for Item 21 has been concluded and then remove this item from the LAP accordingly.

VOTE: 6-0 (Mayor Spitaleri absent)

**5. RTC 09-053 Adoption of 2009 Tentative Council Meeting Agenda Calendar and Approval of Budget Modification No. 29**

Intergovernmental Relations Officer Blackford presented the staff report.

Councilmember Howe requested that each item be voted on separately.

Councilmember Howe requested to delete the September 15, 2009 Council meeting.

Councilmember Hamilton stated she will not attend the August 25, 2009 Council meeting and requested the meeting be canceled.

Councilmember Hamilton inquired as to what study issues are considered to be new-below the line. Intergovernmental Relations Officer Blackford explained once Council prioritizes their study issues, then the city manager determines which items will fall below the line based on City resources. The items that fall below the line because they may not be completed this year will automatically come back next year. Councilmember Hamilton verified with Intergovernmental Relations Officer Blackford that the new-below the line items were below the line previously.

Public hearing opened at 9:15 p.m.

No speakers

Public hearing closed at 9:15 p.m.

MOTION: Councilmember Howe moved and Councilmember Chu seconded to approve the 2009 Tentative Council Meeting Agenda Calendar as submitted

**with the following exception:**

- Staff to delete the August 25 and September 15, 2009 Council meetings and direct the city manager and city attorney to ensure that Council complies with the requirements of the City Charter.

Vice Mayor Moylan inquired if Council needs to meet on National Night Out and Councilmember Howe responded the Council meeting could start at an earlier time that day and still allow time to attend the event.

Councilmember Chu inquired if the May 7 board and commission interview date could be rescheduled due to a VTA meeting. Councilmember Howe agreed to add that to his motion.

Restated MOTION: Councilmember Howe moved and Councilmember Chu seconded to approve 2009 Tentative Council Meeting Agenda Calendar as submitted

**with the following exceptions:**

- Staff to delete the August 25 and September 15, 2009 Council meetings and direct the city manager and city attorney to ensure that Council complies with the requirements of the City Charter; and
- Staff to reschedule the May 7 board and commission interview date.

Councilmember Hamilton stated the Council meeting on National Night Out has been scheduled at 6 p.m. in order for Council to attend the event.

Councilmember Whittum suggested Council could hold the meeting at a neighborhood location and attend the National Night Out event.

Councilmember Hamilton offered a friendly amendment to hold a Council meeting on September 22 in place of September 15, 2008.

Councilmember Howe accepted the friendly amendment, but he will be out of town on both September 15 and 22, 2009.

Councilmember Swegles stated he is concerned about scheduling a meeting on the evening of the National Night Out event.

Vice Mayor Moylan requested Councilmember Howe to restate his motion.

Restated MOTION 1: Councilmember Howe moved and Councilmember Chu seconded to approve the 2009 Tentative Council Meeting Agenda Calendar as submitted

**with the following exceptions:**

- Staff to delete the August 25 and September 15, 2009 Council meetings;
- Direct the city manager and city attorney to ensure that Council complies with the requirements of the City Charter, and suggest meetings if needed;

- Staff to reschedule the May 7 board and commission interview date; and
- Staff to direct Council if a meeting will be needed on September 15 or 22, 2009.

VOTE: 6-0 (Mayor Spitaleri absent)

MOTION: Councilmember Hamilton moved and Councilmember Swegles seconded to approve Budget Modification No. 29 as submitted.

Councilmember Howe stated he does not agree with the cost of studying a model ordinance or to study long term waste management.

Councilmember Hamilton stated she supported the budget modification and noted looking at gray water should be a top priority due to the current water shortage. Councilmember Hamilton stated she also agreed with the regional approach to better serve long-term waste reduction.

Councilmember Chu stated he would not support the motion because the study of gray water should be deleted and left to better economic times. However, Councilmember Chu stated he does support the long-term waste reduction study.

VOTE: 4-2 (Councilmembers Chu and Howe dissented and Mayor Spitaleri absent).

**6. RTC 09-047 Reconsider City's Code of Ethics and Conduct for Elected and Appointed Officials Based on Council Action of February 3, 2009**

Vice Mayor Moylan explained when this item was considered previously, he had mentioned that the entire Bicycle and Pedestrian Advisory Commission had previously spoken on an item. Vice Mayor Moylan said that was an exaggeration on his part as he was attempting to explain the reasoning behind the Council policy. Vice Mayor Moylan stated he should have stated multiple members of the commission had spoken on one item.

Assistant City Manager Robert Walker presented the staff report.

Councilmember Howe suggested the policy, Attachment B, include any corrections be kept confidential by staff and copies of all written reprimands also be sent to the city attorney. Assistant City Manager Walker stated staff will incorporate those changes to the policy.

Public hearing opened at 9:45 p.m.

Jim Griffith, Chair of the Library Board of Trustees, spoke on his own behalf and thanked Bicycle and Pedestrian Commission Chair Kevin Jackson for his comments when this item was first reviewed. Griffith stated Jackson took a broader view on recent edits and was responsible for provoking the positive changes that were made. Griffith stated he supported the policy as it is now written and urged Council to approve this item. Griffith explained the three minutes given to speakers is very important and the previous policy which did not allow members of the boards and commissions to speak, was a disservice to those who devote their time to the City.

Griffith offered a change to page six of the policy, under problem-solving approaches, the policy states, "In private, board and commission members may communicate at any time..."

Griffith explained speaking to Council is never private due to the Brown Act and suggested the sentence be changed to, "In a private setting..."

Griffith referred to page 10, and stated concern about Council not making comments during public hearings and then speaking on issues after the public hearing is closed. An example this evening occurred when Councilmember Whittum proposed a new LAP after the public hearing was closed and there was not any opportunity for the public to comment. Griffith stated it is important to change the policy to allow Council a method in which to let the public know all of what will be discussed. This is an important aspect to consider in order to better serve the interest of transparency in government.

Harriet Rowe, Chair of the Planning Commission, speaking on behalf of the commission, stated the commission was concerned with the use of the word "counseling" in Attachment B. Some Planning Commissioners were concerned this would not allow members to give each other advice and Rowe questioned if that would be prohibited.

City Manager Gary Luebbers explained this type of counseling refers to discipline actions and does not pertain to asking or receiving advice.

Public hearing closed at 9:50 p.m.

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve Alternative No. 2: Council adopts the revised Code of Ethics and Conduct for Elected and Appointed Officials (as presented in Attachment A) with further modification to remove board and commission chair's authority to administer any form of discipline (Attachment B). **with** a change on page 6:

second paragraph, third sentence under the section, *Demonstrate effective problem solving approaches*, to read as follows: During a Council public hearing on any item addressed by the boards or commissions, any member may speak under standard time limits, but shall not speak in regards to the minority opinion of the board or commission to which they belong. Board and commission members have the right to be heard by the Council through email.

Councilmember Hamilton stated she would not support the motion and explained her definition of public as listed in the policy pertains to anywhere else but in the Council Chambers. Councilmember Hamilton explained that previously board and commission members felt the City policy was inhibiting their free speech rights, which is why the correction was made to this policy. Councilmember Hamilton stated she preferred to leave the policy as corrected and written.

City Attorney Kahn stated Griffith brought up a good point because the way the policy is currently written, it appears that a board or commission member could speak in private to all of Council, when the intent was to speak to individual Councilmembers. City Attorney Kahn explained the way it is currently written could create Brown Act issues and suggested the first red sentence on page 6 state, "In private, board and commission members may communicate at any time and on any subject with ~~the City Council~~ **individual Councilmembers ...**".

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Swegles seconded to approve an amendment removing the entire second paragraph on page 6 under *Demonstrate effective problem solving approaches*.

Councilmember Whittum stated there are many items in the paragraph that he finds objectionable and suggested Council form a subcommittee to address further revisions and not continue to use staff time.

Councilmember Chu stated he would not support the amendment because in the past there have been board and commission members who stated they represented the City on a particular item, while in a public setting. Councilmember Chu stated he did support the change made by the city attorney.

Councilmember Hamilton agreed with Councilmember Chu and mentioned a previous abuse of power by a commission member.

Councilmember Whittum clarified the concerns expressed by Councilmembers Hamilton and Chu are covered in the third paragraph on page 6 under *Demonstrate effective problem solving approaches*.

VOTE: 2-4 (Vice Mayor Moylan, Councilmembers Chu, Howe and Hamilton dissented, and Mayor Spitaleri absent)

FORMAL AMENDMENT FAILED.

Vice Mayor Moylan verified with Councilmember Swegles he would like to incorporate the city attorney's suggestion into his motion.

Restated MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve Alternative No. 2: Council adopts the revised Code of Ethics and Conduct for Elected and Appointed Officials (as presented in Attachment A) with further modification to remove board and commission chair's authority to administer any form of discipline (Attachment B).

**with** changes to page 6:

- second paragraph, second sentence under the section, *Demonstrate effective problem solving approaches*, to read as corrected: "In private, board and commission members may communicate at any time and on any subject with ~~the City Council~~ **individual Councilmembers** ..."; and
- second paragraph, third sentence under the section, *Demonstrate effective problem solving approaches*, to read as follows: During a Council public hearing on any item addressed by the boards or commissions, any member may speak under standard time limits, but shall not speak in regards to the minority opinion of the board or commission to which they belong. Board and commission members have the right to be heard by the Council through email.

Councilmember Swegles explained he was attempting comply with the policy requirement that board and commission members must represent the official policies or positions of their board or commission, which is the same action required by Council.

Councilmember Hamilton explained board and commission members are welcome to send Council an e-mail. However, since the Council meeting is the decision point, it is her opinion that board and commission members should be able to express both majority and minority viewpoints at a Council meeting.

Councilmember Whittum stated the motion as worded would prevent members of boards and commissions from appearing before Council and expressing themselves. Councilmember Whittum stated he was opposed to members being required to represent the official policy or position of their board or commission, as if it were their own opinion.

Councilmember Whittum stated he objected to the new wording on page 10 and would support the wording which would not allow opinions to be expressed in advance of a quasi-judicial hearing. Councilmember Whittum stated the Ethics Policy should include the requirement that officials disclose contributions received from any applicants or appellants.

VOTE: 3-3 (Councilmember Whittum, Vice Mayor Moylan and Councilmember Hamilton dissented, and Mayor Spitaleri absent)

MOTION FAILED

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve Alternative No. 2: Council adopts the revised Code of Ethics and Conduct for Elected and Appointed Officials (as presented in Attachment A) with further modification to remove board and commission chair's authority to administer any form of discipline (Attachment B). **with** a change to page 6:

- second paragraph, second sentence under the section, *Demonstrate effective problem solving approaches*, to read as corrected: "In private, board and commission members may communicate at any time and on any subject with ~~the City Council~~ **individual Councilmembers** ...".

FORMAL AMENDMENT: Councilmember Whittum offered an amendment for page 10, third paragraph to change the second and third sentences to read as corrected: ...to conduct a fair review of the issue. ~~This is particularly important when officials are serving in a quasi-judicial capacity.~~

FORMAL AMENDMENT FAILED due to lack of a second.

FORMAL AMENDMENT: Councilmember Whittum offered an amendment to add an item to the policy stating Councilmembers shall disclose when they receive contributions from an applicant or appellant in a quasi-judicial proceeding.

FORMAL AMENDMENT FAILED due to lack of a second.

VOTE: 4-2 (Councilmembers Whittum and Swegles dissented, and Mayor Spitaleri absent)

7. **RTC 09-050 City Appointment to the Moffett Field Restoration Advisory Board**

Intergovernmental Relations Officer Yvette Blackford presented the staff report.

Councilmember Swegles verified with Intergovernmental Relations Officer Yvette Blackford the staff representative for this board attends every meeting although they are not a voting member.

Public hearing opened at 10 p.m.

Arthur Schwartz read his letter to Council and requested it be added to the record. Schwartz's letter read as follows: "Regardless of whether you choose to delegate appointment of an alternate to the Moffett Field Restoration Advisory Board (RAB) to the mayor or the Council, I would be pleased to fill that position which offers certain advantages. Having served as a public representative on the RAB for over three years, thus I am familiar with the operation and with all the people involved, thus would avoid needing a period of time to get up to speed. This appointment is especially critical as the next meeting of RAB is March 12, 2009 and an important topic will be the fate of Hangar One. Secondly, although inactive at this time, I am a sworn volunteer with the City reporting to Deputy Chief Stivers. I look forward to serving the citizens of Sunnyvale on this important board."

Schwartz stated this appointment should be made immediately because it is very important to have a voting delegate on the board at this time. Schwartz stated he is working with the Navy to turn around their position on tearing down Hangar One. Schwartz explained the board is almost unanimous in wanting to preserve the hangar.

Councilmember Hamilton verified with Intergovernmental Relations Officer Yvette Blackford the representative on the RAB does not have to be a governmental official.

Councilmember Hamilton verified with Schwartz he was appointed to serve on the RAB by the RAB committee and was voted into the position.

Councilmember Swegles explained in addition to restoring the hangar, there is still toxic material that needs to be cleaned up.

Public hearing closed at 10:05 p.m.

Councilmember Swegles inquired if the vice mayor can appoint someone to this board. Intergovernmental Relations Officer Yvette Blackford explained this appointment can be either a mayoral or Council appointment. Councilmember Swegles stated he would be willing to attend the March 12, 2009 meeting and then have Schwartz attend the meetings thereafter.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve Alternative No.2: Council appoints an alternate representative to the Moffett Field Advisory Board until Councilmember Lee's return, **with** the appointment to be Arthur Schwartz.

VOTE: 6-0 (Mayor Spitaleri absent)

**COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS**

Councilmember Swegles announced the League of California Cities meeting will be held on Thursday and encouraged his colleagues to attend this meeting since one of the Directors of the Public Employees Retirement System (PERS) will be speaking.

Councilmember Hamilton stated she attended the Santa Clara Cities Association Executive Board Meeting last week and volunteered to have the Department of Public Safety make a presentation regarding the challenge program at the next executive board meeting in June and will be asking the city manager for approval of this request.

Councilmember Hamilton announced the next all-members Santa Clara Cities Association meeting will be held on April 9 and encouraged her colleagues to attend this meeting.

Councilmember Chu stated he is a member of the Metropolitan Transportation Commission. A month ago, the commission decided to lend the State of California \$200 million from its own reserves to prevent the state from stopping transportation projects throughout the Bay Area. Councilmember Chu explained an entire construction season would have been lost if the transportation commission had not stepped forward. During the next commission meeting, the commission will be making final recommendations for the entire bay area and will be allocating approximately \$450 million throughout the nine bay area counties. Councilmember Chu stated the City of Sunnyvale will receive \$2.4 million instead of the \$2.6 million originally requested for transportation projects.

Councilmember Swegles announced he recently became aware of a water conservation award program. In speaking to a representative of this award program, Councilmember Swegles noted the City's recent implementation of water meters in mobile home parks. The award representative encouraged Councilmember Swegles to have the City submit an outline of the City's process used to achieve this conversion and stated the City could receive a conservation award for this effort.

**NON-AGENDA ITEMS AND COMMENTS**

**COUNCIL:** Councilmember Howe thanked staff for the work they completed regarding his appeal that was on the agenda.

Councilmember Whittum stated the California High Speed Rail is in the scoping process and suggested Council hold a study session on the California High Speed Rail process. Councilmember Whittum suggested Council comments be submitted to the scoping process. Councilmember Whittum stated he received concerns from residents over several issues regarding the project.

**MOTION:** Councilmember Whittum moved and Councilmember Chu seconded to hold a study session on the California High Speed Rail prior to April 6, 2009. Comments are to be submitted to the scoping process.

Councilmember Chu explained comment period was extended to April 6, 2009.

Councilmember Chu stated a group of citizens and elected officials meet every Friday in Palo Alto to discuss the High Speed Rail and to talk specifically about issues and how to influence the scoping.

City Clerk Katherine Bradshaw Chappelle announced the voting system had shut down and requested Council to vote by a show of hands.

SHOW OF HANDS VOTE: 6-0 (Mayor Spitaleri absent).

**STAFF:** City Manager Luebbers announced he and the Director of Public Works will be making a presentation to Council on the High Speed Rail.

City Manager Luebbers announced the assistant city manager will be at the League of California Cities meeting later this week.

City Manager Luebbers stated Public Safety and Public Works staff will meet with neighborhood associations on March 9, 2009, regarding parking exemptions and permit issues in neighborhoods. The ultimate decision will come back to Council for action, and at that time staff will have the knowledge of what might work and what the residents would like to have.

#### **INFORMATION ONLY REPORTS/ITEMS**

- Tentative Council Meeting Agenda Calendar
- RTC 09-058 Opportunity for Council to appeal decisions of the Planning Commission of February 9, 2009
- Draft Minutes of the Board of Library Trustees Meeting of February 2, 2009

#### **ADJOURNMENT**

Councilmember Howe requested the meeting be closed in memory of Councilmember Hamilton's grandmother, Ruth Langen. Councilmember Howe spoke of Ruth Langen's life and asked his comments be included in the Council minutes.

Councilmember Howe read the following tribute into the record: "Ruth Langen, loving wife of 73 years to Arthur Langen, passed away Sunday, February 8, in San Jose, California, at the age of 94. Born in Detroit, Michigan, she moved to California in 1949 with her husband Arthur and her two daughters, Judith and Marlene. They settled in Saratoga for 10 years, then moved to San Jose, where they lived for the past 50 years, watching their daughters get married and start their own families. She was active in the affairs of Campbell Union High School District for more than 30 years serving as PTA president and then becoming a district employee. Once Ruth and Art both retired, their time was filled with travel, family get-togethers and watching their five grandchildren and eight great-grandchildren grow. Ruth will be best remembered for the encouragement she gave to others, her sense of humor, and the wisdom and compassion she shared with family and friends. Ruth will be missed greatly."

Vice Mayor Moylan adjourned the Council meeting at 10:17 p.m. in memory of Councilmember Hamilton's grandmother, Ruth Langen.

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Katherine Bradshaw Chappelle  
Interim City Clerk

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Date